IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6587 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SWAMI GANGESHWARANAND EDUCATION TRUST

Versus

COMMISSIONER OF HIGHER EDUCATION

Appearance:

MR HJ NANAVATI for Petitioners

MS MANISHA LAVKUMAR, AGP, for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 19/07/2000

ORAL JUDGEMENT

1. Having heard the learned counsel for the parties, I am satisfied that this petition deserves acceptance.

2. The facts of the case are that on 15th February, 1998, the petitioner school started vocational stream on

the basis of permission being granted by the Education Department, Government of Gujarat. The petitioner was having five classes in Std.XI and five classes in Std.XII in the month of June, 1991. The petitioner was permitted to open more classes in Std.XI vide order dated 4-2-1992. Vide order dated 13-4-1992, the petitioner-school was permitted to open more classes in Std.XII w.e.f. June, 1989. On account of poor result of Std.X the strength of students in the petitioner-school dwindled. The Commissioner of Higher Education of the Government of Gujarat under its order dated 3-8-1996 directed for closure of vocational stream and declared teachers as surplus. This order has not been challenged by the petitioner. Under the certificate of 25-3-1996, it is the case of the petitioner that the Joint Director of Education, Government of Gujarat granted permission to run two classes of Std.XI and Std.XII and accordingly the petitioner continued to run two classes and the Department was accordingly paying the grant. Under the order dated 19-6-1998, the Commissioner of Higher Education, Government of Gujarat directed the D.E.O. to discontinue the grant of the petitioner-school and recover the grant paid from June, 1995. In pursuance of that order of the Commissioner of Higher Education, Government of Gujarat, the District Education Officer passed the order dated 10-7-1998 directing the petitioner to deposit the amount of grant paid during the year 1995-96 and 1996-97. Hence, this petition.

3. Learned counsel for the petitioner contended that both the orders dated 19-6-1998 and 10-7-1998 have been passed by the Officers of the Government of Gujarat without notice and opportunity of hearing to the petitioner. It has next been contended that the petitioner continued two classes under valid order of Joint Director of Education dated 25-3-1996 and that order was also given effect to as the respondents paid grant to the petitioner and this action of the respondents now to order for recovery of the amount of grant given, is wholly arbitrary and unjustified. Lastly, it is contended that otherwise also, the order dated 25-3-1996 was not withdrawn by the respondents at any point of time, and this action is wholly arbitrary.

4. On the other hand, the counsel for the respondents contended that the order dated 3-8-1996 is very specific, clear and therein all the classes have been ordered to be closed and the petitioner has no right to continue any classes. It has next been contended that this order dated 3-8-1996 has not been challenged by the petitioner. In her submissions, the order dated 3-8-1996

is of later in point of time than the order dated 25-3-1996 and by necessary fiction it also stand cancelled under the order aforesaid.

5. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties.

6. The counsel for the respondents does not dispute that the orders dated 19-6-1998 and 10-7-1998 of the Commissioner of Higher Education and Dist. Education Officer respectively have been made by these authorities without giving any notice and opportunity of hearing to the petitioner. Both these orders result in civil consequences and as such before making of the same, the principles of natural justice are to be followed. Though only on this ground, these two orders could have been set aside but otherwise also on merits I find the case in favour of the petitioner.

7. It is true that the order dated 3-8-1996 has not been challenged by the petitioner but it is also equally true that the order dated 25-3-1996 has not been withdrawn by the authorities. Notice has also been given to the petitioner by the authorities for closing down of 8 classes but not 10 classes. Ultimately under the order dated 3-8-1996, all ten classes have been ordered to be closed down. I do not find any reference in the order dated 3-8-1996 of the order dated 25-3-1996. Otherwise also, at no point of time, this order dated 25-3-1996 has been reviewed, recalled or cancelled. The petitioner was given grant-in-aid for the years 1995-96 and 1996-97. That also goes to show that this order dated 25-3-1996 has been given effect to or the order dated 3-8-1996 was taken to be only where 8 classes were ordered to be closed. This position has not been disputed. Reply to the special civil application has been filed by the respondents but therein they failed to give any explanation for this their action not to withdraw the order dated 25-3-1996 and to give grant-in-aid to the petitioner for the years 1995-96 and 1996-97.

8. In view of these undisputed facts, this petition deserves to be allowed and accordingly the same is allowed and the orders dated 19-6-1998 of the Commissioner of Higher Education, Government of Gujarat, Gandhinagar and that of District Education Officer, Ahmedabad (Rural) dated 10-7-1998 are quashed and set aside. Rule is made absolute accordingly. The respondent-State of Gujarat is directed to pay Rs.5000/as costs of this petition to the petitioner as the petitioner has paid this amount as professional fees to

its counsel for rendering his professional services in the matter.

****

zgs/-